IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.113 OF 2007

Sitaram Krishna Shetty ...Appellant

vs.

Municipal Corporation of
Greater Mumbai ...Respondent

Mr.J.M.Chodankar for the Appellant
Ms Geeta Joglekar for B.M.C.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Heard Advocates for the parties. Considering the fact that the Appeal is directed against an order refusing to grant ad-interim injunction, the same is taken up for final hearing at the stage of admission.

2. The challenge in the suit is to the action under section 314 of the Mumbai Municipal Corporation Act,1888 in respect of the suit structure. On 27th February 2007, when this Court issued notice, in clause 2 of the order this Court observed thus :

"2. Corporation to clarify necessity of demolishing only the suit structure, leaving aside other similar structures abutting the suit structure. The photograph produced by the appellant through Counsel, is taken on record. Copy of the photograph be made available to the Counsel for

the Corporation."

3. On 5th June 2007, time was granted to the Respondent-Corporation to comply with the direction given by this Court in order dated 27th February 2007. Till today, compliance is not made and the Advocate for the Respondent has again sought time today.

4. The Trial Court declined to grant ad-interim relief in the Notice of Motion taken out by the Appellant. As the Respondent-Corporation could not comply with the order dated 27th February 2007, the Appeal remained pending in this Court and the ad-interim order passed by this court is operating against the respondent. Since the action is under section 314 of the Mumbai Municipal Corporation Act,1888, instead of keeping the Appeal pending and delaying the hearing of Notice of Motion, interests of justice will be served if the Notice of Motion is ordered to be decided immediately. While deciding the Notice of Motion, the learned trial Judge is bound to consider the clarification which may be made by the Respondent-Corporation in terms of order dated 27th February 2007 passed by this Court. If no clarification is made by the Respondent-Corporation in terms of the order dated 27th February 2007, the Trial Court will consider the consequences of the non compliance.

5. Hence, I pass the following order :

i) The Trial Court is directed to finally dispose of the Notice of Motion No.78 of 2007 as expeditiously as possible and preferably on or before 6th August 2007. Ad-interim relief granted by this court on 27th February 2007 will continue to operate till the final disposal of the Notice of Motion.

ii) The Notice of Motion shall be decided by the trial Court without being influenced by the tentative findings recorded in the impugned order as well as grant of ad-interim relief by this Court.

iii) Subject to what is observed in the Judgment, the Appeal is disposed of in above terms with no order as to costs.

iv) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE